103-SCH

No. 240

FILED
AUG 8 1950
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

J. E. ROSE, JR., a Clerk in the Transportation Department; F. L. GALLOWAY, Division Clerk, Auditor Passenger Receipts; D. H. CRAIG, Chief Time Keeper, Auditor Disbursements Department; W. L. BEERY, Statistician, Freight Claim Department; and J. W. HARMON, Rate Clerk, Freight Traffic Department; et al,

Petitioners,

versus

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, ET AL.,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT

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Dated July 31, 1950.

WILMINGTON PRINTING COMPANY

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Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

J. E. Rose, Jr., a Clerk in the Transportation Department; F. L. Galloway, Division Clerk, Auditor Passenger Receipts; D. H. Craig, Chief Time Keeper, Auditor Disbursements Department; W. L. Beery, Statistician, Freight Claim Department; and J. F. Harmon, Rate Clerk, Freight Traffic Department; et al, respectfully petition that a Writ of Certiorari issue to review the judgment rendered in this case by the Circuit Court of Appeals of the Fourth Circuit, and in support of the petition respectfully show:

Jurisdiction

The judgment of the Circuit Court of Appeals of the Fourth Circuit was entered on the 10th day of May, 1950, and became effective as of that date.

The jurisdiction of this Court is invoked under Title 28, U. S. C. A., Section 1254, Sub-section 1, providing that cases in the Circuit Courts of Appeal may be reviewed by the Supreme Court by the following methods:

1. By writ of Certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree herein.

The Writ is applied for within ninety days after the entry of the judgment requested to be reviewed, as prescribed by Title 28, U. S. C. A., Section 2101(c).

The judgment sought to be reviewed was rendered in a proceeding brought by the petitioners, in which the petitioners sought to intervene in a civil action instituted in the United States District Court for the Eastern District of North Carolina, by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, et al, hereinafter called the Brotherhood, plaintiffs, against the Atlantic Coast Line Railroad Company, hereinafter called the Company, defendant, the petitioners contending, among other things, that the Brotherhood had no legal right to represent the petitioners as bargaining agents between themselves and their employer, the Company, for the reasons set out in the intervenors' complaint, which was filed with motion for leave to intervene. (App. P. 11.)

The United States District Court denied the petitioners' motion to be permitted to intervene in said cause and this judgment was affirmed on appeal by the Circuit Court of Appeals for the Fourth Circuit. The intervenors filed their complaint of intervention pursuant to Rule 24(c) and Rule 17(a), Federal Court.

Statement of Matter Involved

The petitioners herein constitute approximately 850 of the defendant Company's employees, and have been since 1921 a

separate craft or class, since which time they have been so recognized by the plaintiff Brotherhood and the defendant Company in contracts between the plaintiff Brotherhood and the defendant Company. The Class or Craft to which the petitioners belong, by a series of contracts between the Brotherhood and the Railroad Company, has been excepted from the agreement between the Brotherhood and the Railroad Company, the petitioners being known as the "Personal Office Forces", and the rules excepting these petitioners, and others similarly situated, from the several agreements between the Brotherhood and the Railroad Company were adopted in 1925, again in 1936 and in 1944, which latter is yet in force, and the particular positions now excepted are fully described as Exhibit A (see Exceptions and Scope Rule 1, App. P. 18).

During the year 1946, a dispute arose between the Brotherhood on the one hand, and the excepted employees on the other (the present petitioners), with the Brotherhood asserting the right to represent the excepted employees and the excepted employees disputing the right. Accordingly, when the Brotherhood requested the Mediation Board to investigate this dispute, it would seem that notice should have been given to the excepted employees (the present petitioners). It was not. The Board prepared a list of employees eligible to participate in the election as members of the craft or class of clerical, office, station and storehouse employees, resulting in 5,594 employees being declared eligible to vote. The approximately 850 employees, in whose behalf the petition to intervene was filed, were included in this number of 5,594 employees although this group, that is the petitioners as a group and as a class and craft, had been specifically excepted from 1922 up to and including 1944 in contracts made between the Brotherhood and the defendant Railroad Company, with respect to the employees classified as Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which latter class

and craft admittedly is and was at the time of the institution of this action legally represented by the Brotherhood as their representative for collective bargaining with their employer, the Atlantic Coast Line Railroad Company.

The petitioners constitute:

1. Outside officers or agencies off the line of road and outside offices on the line of road, not connected with the Operating Department.

2. Employees assigned to road service where special training, experience and fitness are necessary.

3. Personal office forces.

The above named class or crafts have always been excepted from the rule known as the Scope Rule and have at all times been excepted from the several agreements between the Brotherhood and the Railroad Company. (App. Pages 16 and 17.)

Question Presented

Do a group of employees composing a different class or craft from those heretofore represented by the Brotherhood for the purpose of collective bargaining, have the right to intervene in a cause instituted by the Brotherhood against their employer for the purpose of asking the Court's affirmative help by granting a decree for the enforcement of a certificate of the Mediation Board under Section 2 (9th), Title 45, U. S. C. A., Section 152, Sub-section 9, which certificate of such Board requires the petitioners to accept the Brotherhood as its bargaining agent, when the petitioners do not desire the Brotherhood, or any other union, to act as their agent for the purpose of collective bargaining. The effect of the certificate is to include the petitioners as members of a class represented by the Brotherhood, to which class they do not wish to belong.

Reasons Relied On For Allowance of Writ

1. It is petitioners' contention that the Circuit Court of Appeals has decided an important question of federal law, which has not been but should be settled by this Court.

2. That the decision of the District Court and of the Circuit Court of Appeals violates the "due process" clause of the United States Constitution in that by declining to permit the petitioners to intervene and assert their legal rights, if any they have, the petitioners have been deprived of their day in court.

A supporting brief is annexed to this petition.

WHEREFORE, petitioners respectfully pray that a Writ of Certiorari issue to review said judgment of the Circuit Court of Appeals for the Fourth Circuit, and that the judgment of the Circuit Court be reversed, which affirmed the judgment of the District Court refusing the petitioners the right to intervene and establish their rights, if any they have, to decline to be represented by the Brotherhood as their agent to bargain collectively with their employer.

Respectfully submitted,

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Petitioners,

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BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, ET AL.,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. Opinion of the Court Below

The opinion of the Circuit Court of Appeals for the Fourth Circuit is reported in , and appears at Pages et seq. of the record. The opinion of the District Court appears in the Appendix, Pages 28 et seq., Record Page .....

II. Jurisdiction

The jurisdiction of this Court is invoked under Title 28, U. S. C. A., Section 1254(1).

III. Statement of the Case

The case is stated under the head, "Statement of Matter Involved", Page 2 of the Petition for the Writ. It is re-

spectfully requested that such statement be considered as being incorporated here.

IV. Question Presented

The question presented is stated under the same heading, Page 4 of the Petition, and it is respectfully requested that the question as there stated be considered as re-stated here.

V. Argument

The main action, in which these petitioners are now seeking to intervene, was brought by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, et al, against the Atlantic Coast Line Railroad Company, to enforce a certificate of the Mediation Board, which certified that the Brotherhood, by virtue of an election held under the auspices of the Mediation Board, had become the bargaining agent of the petitioners, which as a class and craft had always been heretofore excluded and excepted from the Scope Rule, and who form an entirely separate and distinct class or craft from the class and craft admittedly represented by the Brotherhood, it having been made to appear that the petitioners never, individually or collectively, wished to be represented by this Brotherhood or by any other union for the purpose of collective bargaining or for any other purpose.

We call the attention of the Court to the fact that the main action brought by the Brotherhood against the Railroad is a class suit and is so specifically denominated in the Brotherhood's complaint in that section, (App. Pages 1-3) it being alleged in the petitioners' complaint in the petition to intervene that the petitioners did not belong to the class or crafts represented by the Brotherhood, and specifically enumerated and designated in the complaint filed by the Brotherhood in the main action; that, therefore, these petitioners are entitled to

intervene for the purpose of establishing this fact, and are entitled to their day in court for this purpose and to show that they are not adequately represented by the Brotherhood, and that they do not wish to be represented by the Brotherhood or any other union for the purpose of collective bargaining. The petitioners are a separate or particular class or craft of employees and for more than twenty-five years have been so designated and classified under three previous contracts between the Brotherhood and the defendant Railroad Company, and as such separate class or craft these petitioners contend that they have, by a majority vote, the right to determine who, if any one, may be their representative for the purpose of collective bargaining with their employer.

As supporting the petitioners' contention with respect to their petition to be allowed to intervene and to assert such rights as they may have, the attention of the Court is respectfully called to the following cases:

Brotherhood of Railway and Steamship Clerks, etc., vs. N. C. and St. L. & R. Company, 94 Fed. (2d) 97. (The National Mediation Board was not a party to this suit.)
McNulty vs. National Mediation Board, et al, 18 Fed. Sup. 494.
Ducan Townsite Co. vs. Lane, 245 U. S. 310.
Virginia Railroad Co. vs. System Federation, 300 U. S. 515.
Order of Railway Conductors of America vs. National Mediation Board, 113 Fed. (2d) 531.

and numerous cases cited in the above authorities.

Title 45, U. S. C. A., Section 152, Sub-section 4, reads as follows:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this chapter."

The petitioners herein contend that they are a separate class or craft and have always been so recognized, both by

the Brotherhood and by the Railroad Company, and have had no oportunity to select a representative if they desired one. In the election held these petitioners, about 850 in number, were classed with another class or craft of more than 4,000 in number, who were at said time, by a prior election duly held, represented by the Brotherhood. It is the contention of the petitioners that at any such election only these petitioners should have been permitted to vote.

It is not disputed that the Brotherhood not only represented the larger class of clerical employees but was recognized as such representative, not only by the employees but by the Company, and there had been in force a contract between the Brotherhood and the Company that class of clerical workers since 1922, as amended from time to time, and there has never been any dispute about the Brotherhood's right to represent this group among the employees themselves, or between the Brotherhood and the Company. In this connection we respectfully call the Court's attention to 45 U. S. C. A. 152 (9th):

> "In such an investigation (as to who shall constitute the authorized bargaining agent of a class of employees), the Mediation Board shall be authorized to take a secret ballot of the *employees involved.*"

From what has heretofore been said it would seem quite obvious that the only *employees involved* were the 850 employees, whom the Brotherhood did not represent and whom it sought to represent over their objection.

Further in said Act, 45 U. S. C. A. 152 (9th), appears the following:

> "It shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to *both* parties in writing, within 30 days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the *employees involved* in the dispute, and certify the same to the carrier."

From the foregoing language of the statute it would appear that the Mediation Board is required to give notice to both parties, one of which was the group of 850 employees, the present petitioners, who were the only *employees involved*, and the only ones who never received any notice other than notices posted on bulletin boards to the effect that an election would be conducted.

These petitioners submit that any dispute with regards to who should or should not be represented by the Brotherhood was initiated by the Brotherhood without consulting or notifying these petitioners, or any of them, nor was there any hearing conducted by the National Mediation Board as required by Title 45, U. S. C. A., Section 152, at which these petitioners or any of them were heard, nor did they have notice of, nor were they given any opportunity to protest the designation of employees, who should participate in the election, or to protest the classing of petitioners, numbering 850, with the class represented by the plaintiff Brotherhood numbering more than 4,000. Furthermore, these petitioners contend and submit that even if they alone had been declared eligible to vote in said election, the ballot submitted was so framed that neither as a group nor individually could they have expressed their wishes. The ballot used was in the following form:

Mark an "X" in the Square of Your Choice

If you desire to be represented by The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, Mark an "X" in this square ☐

If you desire to be represented by any other Organization or Individual, write the name of such on this line

_____

Mark an "X" in this square ☐

App. Page 15.

The form of the ballot was such that these petitioners would have been required to have voted either that they desired to be represented by the Plaintiff Brotherhood, which they do not, or by some other organization or individual, which they do not. In other words, they were merely given a preference as between the plaintiff Brotherhood or some other organization or individual, whose name had to be filled in on the ballot, otherwise the ballot would be marked void. These petitioners never at any time were given the opportunity at the election to express their preference or vote their convictions but were absorbed into a larger craft or class, notwithstanding the fact that they had been a separate class or craft for many years and so recognized by the Brotherhood.

The respondent, Brotherhood, seems to rely in support of its position, at least in part, upon the ground that the Mediation Board was not made a party in the petitioners' motion to intervene. The petitioners asked leave to intervene in a suit pending between the Brotherhood, plaintiff, and the Atlantic Coast Line Railroad Company, defendant, and so filed as to both the plaintiff Brotherhood and the defendant Railroad Company in the main action. It seems unnecessary in this situation to ask that the Mediation Board be made a party but if thought proper or necessary by the Court, this could easily be accomplished.

The appellee's, Brotherhood's, main reliance, however, appears to be the decision in the case of Switchmen's Union of North America v. National Mediation Board, 320 U. S. 297. The District Court and Court of Appeals both denied the petitioners' application for intervention on the grounds that the Switchmen's Union case forbade it, whereas the Court had clearly and plainly stated in the Switchmen's Union decision that this Court was not deciding whether or not a group such as the petitioners could intervene in an action brought to enforce a certificate issued by the National Mediation Board, so

that although this Court may eventually reach the conclusion that the petitioners should not intervene, or that having intervened, they were not entitled to the relief demanded, the Switchmen's Union case is no authority for that proposition. Both the District Court and the Court of Appeals, we submit, have reached their results upon an improper interpretation of the Switchmen's Union decision.

We respectfully call the court's attention to the concluding paragraph of the main opinion in the Switchmen's case *supra* at page 67:

> "What is open when a court of equity is asked for its affirmative help by granting a decree for the enforcement of a certificate of the Mediation Board under Section 2(9th) raises questions not now before us?"

The question which is presented for the decision of this court is whether or not a labor organization which, under the Railway Labor Act occupies such a high position of trust that it has been declared to be a fiduciary, may, by its own motion seek and obtain the right to represent a class or craft over the objection of an overwhelming majority of that craft or class. When such a result is accomplished by a "Gerrymandered" election, in which is included a much larger craft or class admittedly represented by the Brotherhood, it seems quite accurate to say that the agent has become the principal and the servant has become the master. No longer would the employees be entitled to organize collectively and select representatives of their own choosing. Instead the representative chooses the employees whom he seeks to represent, and imposes upon them his own will. This is indeed a far cry from the purpose for which the Railway Labor Act was enacted.

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Dated July 31, 1950.